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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

AARON REICH,

Plaintiff, Cross-defendant and  
Appellant,

v.

TAMARA MUSLIN,

Defendant and Respondent;

TLM ENTERPRISE GROUP,

Defendant, Cross-complainant and  
Respondent.

G055533

(Super. Ct. No. 30-2015-00827756)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Martha K. Gooding, Judge. Affirmed in part, reversed in part with directions.

Horowitz + Armstrong, John R. Armstrong and Vanoli Chander for  
Plaintiff, Cross-defendant and Appellant.

MK Smith and Mark T. Kearney for Defendants, Cross-complainant and  
Respondents.

Aaron Reich and Tamara Muslin had a romantic relationship for many years. During that time, Muslin purchased, owned, and operated a successful pet grooming business (TLM). Shortly after their relationship ended, Reich sued Muslin for a part ownership of TLM and for unpaid wages for hours he claimed he worked as an employee of TLM. The court determined Reich did not have any ownership interest in TLM and he was at no time an employee of TLM. It also described Muslin as the “off-title” owner of a boat purchased in Reich’s father’s name, and it issued a permanent injunction ordering Reich to stop interfering with TLM’s business property.

Reich appeals the judgment, claiming: (1) he was an employee of TLM, not an independent contractor; (2) TLM stock should be issued to him under a promissory estoppel theory; (3) the description of Muslin as an “off-title” owner of the boat was outside the scope of the complaint; and (4) the permanent injunction in favor of TLM was unnecessary and overbroad.

Application of the appropriate substantial evidence standard of review dooms Reich’s appeal on the first and second claims. First, it does not matter whether Reich was properly classified as either an employee or as an independent contractor because substantial evidence supports the court’s determination that “credible evidence plainly showed that Muslin largely supported Reich during the relevant periods and that the value of all the items paid for by Muslin for Reich *far exceeded* the value of the minimal assistance he provided to TLM and its businesses.” (Italics added.) Thus, any error in classifying Reich as an independent contractor was necessarily harmless. Second, substantial evidence supports the court finding that “Muslin never agreed to give Reich *any* ownership interest in TLM or in any of the businesses TLM owned and operated.” The overarching rationale for nearly all of the court’s findings was its palpable disbelief of Reich’s testimony and its concomitant belief of Muslin’s testimony. We will not second-guess the court’s credibility determinations.

The court did not abuse its discretion by including, in a footnote, a recitation of the circumstances surrounding the acquisition of the boat. Although the complaint did not raise an issue regarding ownership of the boat, the court's discussion was helpful in explaining, in part, the court's finding that Muslin's payment of Reich's living expenses far exceeded the value of his minimal services to TLM.

The entry of a permanent injunction against Reich, however, was not supported by substantial evidence, and thus the court abused its discretion by ordering it. There was no evidence of any continuing threat that Reich would interfere with TLM's business.

Thus, we reverse the issuance of the permanent injunction. In all other respects we affirm the judgment.

## FACTS

Muslin and Reich met in high school and had an off-and-on romantic relationship from 1999 to 2015. In approximately 2007, Reich moved into Muslin's condominium with her. They married in 2015, but the marriage lasted only a few months.

Muslin is an experienced pet groomer. In 2005, she purchased the pet grooming business she was working for, Dana Point Pet Grooming. In 2011, Muslin incorporated her business as TLM, with herself as the sole shareholder and herself and her parents as directors. TLM was successful and Muslin opened two other locations in 2012 and 2013.

During their relationship, Muslin supported Reich. He lived in her home rent free. Muslin paid for their home, utilities, cars, a boat, vacations, and more.

As Muslin was supporting Reich, he would occasionally assist Muslin with her business. On average, Reich would provide this assistance one to two hours a week, helping with the company's internet presence and providing some management consulting. Reich also set up basic Web site domains for the company, standard phone systems, and social media Web sites. Reich put the accounts in his own name, and all of the payments were made by TLM. Reich alleged Muslin requested that Reich leave his full-time job to join TLM full-time. Reich was earning a base salary of \$60,000 a year with an additional \$20,000 in commission at his previous job.

In July 2015, Muslin believed Reich had again been unfaithful to her. She filed for divorce in August 2015.

Just a few months after Muslin filed for divorce, Reich filed a complaint against Muslin and TLM for declaratory and injunctive relief for issuance of corporate shares, dissolution of the corporation upon issuance of 50 percent of the shares in the corporation, and statutory wage violations. TLM filed a cross-complaint against Reich, asserting causes of action for breach of fiduciary duty, conversion, and for issuance of preliminary and permanent injunctions. Muslin alleged in September 2015, after the couple separated, Reich interfered with TLM's Web site domains, phone systems, e-mail systems, and social media accounts (collectively, TLM's business property). She claimed Reich kept TLM's business property in his name, rendered it inoperable, prevented TLM from having access to it, and refused to return it to TLM.

After a bench trial, the court determined Reich had no ownership interest in TLM, “[i]n short, the Court finds Muslin never agreed to give Reich *any* ownership interest in TLM or in any of the businesses TLM owned and operated. Reich’s testimony to the contrary was inconsistent, unreliable, and not credible.”

The court also found Reich was not entitled to unpaid wages. It conceded Reich did provide minor assistance to Muslin and TLM over the years, but “[c]redible evidence show[ed] Reich provided no more than an average of 1-2 hours of assistance to Muslin and TLM per week . . . .” The court further observed “[i]n performing these tasks, Reich worked independently, on his own time schedule, using his own computer. Almost none of the assistance he provided was performed at any TLM location; he almost always worked remotely, by computer or telephone. Muslin did not control the manner or means by which Reich accomplished the results.” The court went on to describe Reich’s work was done in part because of his romantic relationship with Muslin and in part because he knew TLM’s financial success had a direct benefit to him. It concluded “at most, Reich was an independent contractor providing sporadic or occasional advice or assistance with respect to technical support, customer complaint resolution, new location build-out, and personnel issues. [Citations.] Reich knew the value of the support he received from Muslin far exceeded the value of the minimal assistance he provided to her business.”

As part of its decision regarding the couple’s lifestyle and compensation to Reich by way of payment of his living expenses, the court described (in a footnote) Muslin as the off-title owner of a boat purchased by the couple in Reich’s father’s name: “Although Reich wanted to buy a boat, he did not have the money to buy it and because of his previous bankruptcy, he could not qualify for a loan to purchase it. Muslin did not want to take out a loan in her name to buy the boat because of the business loans she already had. So Reich came up with the idea to nominally put the boat (and the loan for

it) in his father's name, with the understanding and agreement that Muslin would make all payments on it and would be the boat's 'off-title' owner."

The court granted TLM's request for a permanent injunction enjoining and restraining Reich from interfering with TLM's business property. It stated, "The evidence shows that, for some time following Muslin's termination of their relationship, Reich interfered with TLM's ability to control, use and/or access these websites, phone numbers and Facebook account. A preliminary injunction was entered on May 17, 2016 enjoining Reich from interfering with the TLM websites, social media accounts, and phone systems/accounts and compelling Reich to transfer control and access of them to TLM." It concluded, "The Court finds TLM is entitled to a permanent injunction enjoining and restraining Reich, and those acting with or for him, from exercising any control or ownership—or otherwise interfering with—TLM's [b]usiness [p]roperty, including its social media, websites, telephone numbers and telephone systems. It is readily apparent that wrongfully exercising ownership or control over a business's social media, websites, and telephone numbers harms the business (and its ability to communicate with actual and prospective customers) and supports injunctive relief."

## DISCUSSION

### *Standard of Review*

Reich contends the de novo standard of review applies because the appeal involves "pure issues of law" and "[t]he application of law to undisputed or uncontroverted facts is subject to the court's independent review." We disagree with Reich's characterization of the issues on appeal. Contrary to Reich's claim, he does not challenge the trial court's interpretation of the law, but rather contends the facts do not support the court's findings. The standard of review, therefore, is substantial evidence, requiring Reich to prove there is no substantial evidence to support the factual

determinations. (See *People v. Palma* (1995) 40 Cal.App.4th 1559, 1566-1567 [“A finding as to whether a person is an employee or an independent contractor is generally treated as a question of fact”].) In applying the substantial evidence standard, the factual findings of the trial court are to be presumed correct and it is the appellant’s burden to show reversible error by an adequate record. (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 31.) The court’s fact-finding function is entitled to great deference. (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 750.)

### *Classification of Reich as an Independent Contractor was Harmless*

Reich contends the court erred by determining he was not a TLM employee. Ordinarily, in evaluating Reich’s argument, we would review the record to determine whether substantial evidence supported the court’s decision on Reich’s classification. But here, our review is much simpler. Under the court’s factual findings, to which we give “great deference,” any error in classifying Reich, as either an independent contractor or as an employee, was harmless because the court found “the credible evidence plainly showed that Muslin largely supported Reich during the relevant periods and that *the value of all the items paid for by Muslin for Reich far exceeded the value of the minimal assistance he provided to TLM and its businesses.*” (Italics added.) Thus, the court’s finding that Reich was fully compensated, if supported by substantial evidence, would compel a judgment in favor of Muslin on the statutory wage claim, even if Reich was classified as an employee.

We begin our search for substantial evidence supporting the full compensation finding by noting the court’s observation that “[t]he credibility of the witnesses was critical in this case, as the parties presented sharply divergent versions of many key facts.” In that regard, the court made multiple findings that Reich’s testimony was not credible on any of the key facts. With respect to Reich’s claim about the hours he performed services for TLM, the court found his testimony “to be unreliable and not

credible. Indeed, the Court [found] Reich’s description of the assistance he gave to Muslin and TLM’s businesses to be grossly exaggerated and wholly not credible.” Commenting on a chart “Reich prepared and introduced into evidence . . . listing the hours he claims to have devoted to the business of TLM” the court found that the “chart was prepared by Reich long after the dispute arose and it, too, is unreliable and not credible. The credible evidence shows that, on average, Reich spent only 1-2 hours per week assisting Muslin or TLM.”

It is axiomatic that “we do not ‘weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it.’” (*Do v. Regents of University of California* (2013) 216 Cal.App.4th 1474, 1492.) Muslin testified that except for the brief periods of time when Reich provided some assistance with the opening of two new locations, his help on behalf of TLM averaged one to two hours per week. Simply put, the court believed Muslin’s testimony; it disbelieved Reich’s testimony.

The question then becomes whether substantial evidence supported the conclusion that Muslin’s support of Reich “far exceeded the value of the minimal assistance he provided to TLM.” The court recounted that evidence in detail. As the court explained, “Reich’s willingness to provide this assistance to Muslin was more than fully reciprocated and recompensed, as Muslin supported Reich for years. Reich understood that helping TLM and Muslin succeed financially redounded to his benefit in very immediate and tangible ways. Reich understood the more successful TLM’s business was, the more money Muslin would have to support him and to fund the lifestyle he (and they) enjoyed. Their lifestyle included, for example, multiple vacations abroad (e.g., to Greece, Dubai, Israel, Turkey, and Costa Rica), multiple trips to Cabo San Lucas and Hawaii, frequent (generally, twice-monthly) extended-weekend vacations to Mexico, multiple weekend trips to Reno and Las Vegas, ownership of a 40-foot boat, ownership of a four-person ‘Can-Am’ off-road vehicle, and ownership of a large “fifth-wheel”



recreational vehicle (‘RV’) they kept in Mexico as a second home to use during their frequent vacations there. Muslin paid for all of this, including the vacations, the boat, the Can-Am, and the RV in Mexico. Moreover, Reich lived—rent-free—in the condominium Muslin owned, while she paid (in addition to the initial down-payment) all the monthly mortgage payments; all the insurance, property tax, and homeowner association payments; all the repair, utility and maintenance costs (including the cost of a gardener); and the cost of all the upgrades on the residence, including an outdoor spa and an outdoor island (which included a built-in BBQ, ‘keg-erator,’ refrigerator, and fire pit). Reich paid nothing toward any of these expenses. He did not own the condo, boat or vehicles—Muslin did—and he had no liability for any of the outstanding loans on any of them. In addition to all this, Muslin had TLM pay for Reich’s cell phone bills and the satellite radio subscription for his car; she paid for the cable or satellite television for the condo; and she also frequently gave Reich cash—or paid for other of his expenses—whenever he ran short of money.” (Fns. omitted.) This evidence is more than substantial—it is overwhelming.

Fundamental to any appellate review is the notion that even if error is established, reversal is not automatic. Instead, the appellant must demonstrate that the error was prejudicial. (Cal. Const., art. VI, § 13 [“No judgment shall be set aside . . . unless, after an examination of the entire cause, . . . the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice”].) “To establish prejudice, a party must show ‘a reasonable probability that in the absence of the error, a result more favorable to [it] would have been reached.’” (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1161.) Here, it does not matter whether Reich was classified as an employee or as an independent contractor. Any error in making that classification decision was harmless because in either case the overwhelming evidence showed that the financial support he received from Muslin far exceeded the value of his minimal service to TLM. Reich was not entitled to any additional compensation.

*Substantial Evidence Supports the Court's Determination that Reich Was Not Entitled to TLM Stock*

Reich contends he detrimentally relied on representations made by Muslin that he would receive stock for services provided to TLM. But the court determined there was no agreement or promise by Muslin for Reich to obtain an ownership interest in TLM. Without a promise, reliance becomes a nonissue.

Reich correctly identifies the elements of a promissory estoppel claim as, “(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance.” (*Laks v. Coast Fed. Sav. & Loan Assn.* (1976) 60 Cal.App.3d 885, 890.) “Promissory estoppel is ‘a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced.’” (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310.)

Initially, Reich claimed at trial there was an agreement for him to obtain a 50 percent ownership interest in TLM. But the court determined there was no such agreement. On appeal, Reich asserts Muslin made a promise, upon which he detrimentally relied, for TLM stock. However, the record reveals Muslin made no such promise, much less one unambiguous in its terms. Indeed the court determined, “the discussions between Muslin and Reich never reached the point of an agreement or promise by Muslin to give Reich *any* ownership interest in TLM . . . .” The court cited the evidence in support of its decision detailing “Muslin repeatedly expressed reservations and misgivings about giving Reich an ownership interest in the business—including her persistent concern about what would happen if she were to give him an ownership interest and he thereafter left her or continued to be unfaithful to her.” The court’s conclusion that Reich never owned part of TLM was confirmed by several documents showing that even Reich did not believe he had an interest: “For example, in

connection with the 2013 opening of the Ladera Ranch location, Muslin prepared a written business plan. That document—which Reich testified he helped prepare—stated unequivocally Muslin had ‘100% ownership’ of TLM.” Finally, the court also noted Muslin articulated a series of conditions for Reich to achieve an ownership share in TLM in October 2013, but Reich admitted he did not comply with the conditions.

Substantial evidence supported the court’s finding that there was no agreement or promise for Reich to obtain an ownership interest in TLM. None of the documents or testimony indicated such a promise was made. Quite the opposite. The evidence showed Reich repeatedly acknowledged Muslin was the sole owner of TLM. Reich claimed Muslin promised him an ownership interest in 2011, yet as late as 2013 he acknowledged in writing that the business was solely owned by Muslin. Indeed, at trial Reich could not provide the terms of the agreement he was alleging. Substantial evidence manifestly supported the court’s determination that Muslin made no promise to Reich concerning his ownership of TLM.

*The Court Did Not Err in Describing Muslin as the “Off-title” Owner of the Boat*

Reich claims the parties did not raise the issue of ownership of a boat in any cause of action in the underlying complaint or cross-complaint. Muslin contends Reich’s claim for statutory wage violations encompassed the issue of boat ownership as a component of living expenses she provided for Reich. We agree. The court’s description of Muslin as the “off-title” owner of the boat obviously could not quiet title in Muslin’s favor because the “on-title” owner of the boat, Reich’s father, was not a party to the lawsuit. In context, the evidence was introduced solely for the purpose of demonstrating the extent of Muslin’s support of Reich’s living expenses.

As discussed above, one of the issues at trial was the extent to which Reich's living expenses were paid. One component of Reich's living expenses was the payment by Muslin of both the down payment and the monthly loan payments for the 40-foot boat Reich used. The evidence showed that while Muslin made all of the payments toward the boat, the boat was put under Reich's father's name when purchased to preserve Muslin's business credit and because Reich could not qualify for a loan. Reich testified the boat was his father's and said he knew nothing about Muslin's payments toward the boat. But the court did not credit Reich's testimony and determined "Reich paid nothing toward [the former couple's living] expenses. He did not own the condo, boat or vehicles—Muslin did—and he had no liability for any of the outstanding loans on any of them." (Fn. omitted.)

Reich argues "this judicial determination on [the boat's] title . . . has led to additional claims being filed against Reich . . . ." The mere fact that the court's description led to additional claims does not mean it was inappropriate. Reich provides no evidence or authority for his assertion that the court erred by discussing, not ordering or ruling on, ownership of the boat when it was a necessary and proper item of living expenses enjoyed by Reich.

#### *The Court Erred by Issuing the Permanent Injunction in Favor of TLM*

Reich claims that the evidence at trial did not support the permanent injunction issued against him. He contends the evidence did not demonstrate Reich was continuing to interfere with TLM's business property. We agree there was insufficient evidence to support the issuance of a permanent injunction.

“The trial court’s decision to grant a permanent injunction rests within its sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion.” [Citations.] Notwithstanding its discretionary component, a permanent injunction must be supported by substantial evidence in the record.” (*Thompson v. 10,000 RV Sales, Inc.* (2005) 130 Cal.App.4th 950, 964.) Injunctive relief is generally “available to prevent threatened injury and is not a remedy designed to right completed wrongs.” (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1403, fn. 6.)

Reich argues there was no evidence his inference with TLM’s business assets was continuing. Reich testified TLM’s business property, consisting of Web sites and phone numbers, which had been interconnected with his personal accounts, were separated by the time of trial. Muslin has not pointed out any evidence of Reich’s continued interference or threatened interference. Muslin conceded in her respondent’s brief on appeal that “[i]t was only after [TLM] pursued contempt against Reich for violation of the court’s [preliminary] injunction that he finally fully cooperated in turning the accounts over.”

A permanent injunction is appropriate only where the misconduct is ongoing or likely to recur. (*Allen v. Hotel & Restaurant etc.* (1950) 97 Cal.App.2d 343, 348 [“To authorize the issuing of an injunction it should appear with reasonable certainty that the wrongful acts will be continued or repeated”].) Here, however, there was no evidence Reich continued, or even maintained the ability, to interfere with TLM’s business assets. Testimony at trial showed Reich turned over all disputed accounts to TLM after the preliminary injunction was issued. Muslin does not argue otherwise. Thus we reverse the court’s issuance of the permanent injunction because there was no evidence of Reich’s on-going wrongful conduct.

## DISPOSITION

We reverse the trial court's issuance of a permanent injunction and direct the trial court to enter a new judgment eliminating paragraphs 2(a) and 2(d) as found in the original August 14, 2017 judgment. In all other respects the judgment is affirmed. Respondents shall recover their costs on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.